IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

MFA.No. 1413 of 2001(A)

OPMV.1788/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
.....

APPELLANT/PETITIONER:

PURUSHOTHAMAN V.S.
VINNU BHAVAN,
H.NO.1341/29,
TEMPLE ROAD, VYTTILA,
COCHIN - 19.

BY ADV. SRI.T.K.KOSHY

RESPONDENTS/RESPONDENTS:

1.R.V.VISWASARAN NAIR,
S/O.VASUDEVAN NAIR,
SENIOR INSPECTOR, GOVT. ITI.,
ATTINGAL, TRIVANDRUM.

2.ANIL HANDSON, S/O.HANDSON,
T.C. 15/639, ROHINI COMPOUND,
M.P.APPAN ROAD, OPPOSITE L.I.C.,
TRIVANDRUM. (REMOVED)

NAME OF THE 2ND RESPONDENT IS REMOVED FROM PARTY ARRAY AT RISK OF TH PETITIONER VIDE ORDER DATED 2.11.2006 IN I.A.3025/2005.

3.THE BRANCH MANAGER, NATIONAL INSURANCE CO. LTD., IIND FLOOR, K.K.BUILDING, ARISTO JUNCTION, TRIVANDRUM.

BY ADV. SRI.MATHEWS JACOB FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A. NO.1413 OF 2001

Dated this the 15th day of June, 2007

JUDGMENT

Koshy, J.

Appellant met with an accident by which he suffered extensive injuries. He claimed compensation of Rs.3,12,750/-. Tribunal awarded only Rs.47,000/-. The compensation claimed and granted in various heads are as follows:

Head	Claim	Award
Part I		
Loss of earnings	Rs.20,000/-	16,000/-
Transport Expenses	Rs.10,000/-	800/-
Extra Nourishment	Rs.10,000/-	150/-
Attendant Expenses	Rs.15,000/-	300/-
Damage to clothing	--------	400/-
Medical Expenses	Rs.25,000/-	8,670/-
Loss of Amenities and enjoyment in life	Rs.50,000/-	5,000/-

Part II

Pain & Suffering	Rs.50,000/-	18,000/-
Permanent Disability	1,00,000/-	-----
Loss of Earning Power	1,00,000/-	-----
Total	3,12,750/-	47,000/-

Tribunal also found that accident happened due to the negligence of the driver of the vehicle insured by the 3rd respondent Insurance company. Only dispute is regarding the quantum of compensation.

2. No amount was awarded for disability and loss of earning power. The appellant was employed as Assistant Depot Engineer in K.S.R.T.C. and Ext.A3 Salary certificate shows that he was earning a salary of Rs.6,137/- (inclusive allowances). Ext.A3 also shows that he was on four months leave and during the leave period only Rs.8,000/- was received

by him. Therefore loss of actual earnings will be Rs.16,000/- whereas tribunal has granted only Rs.13,587/-. He will be entitled to Rs.2,500/- for loss of earnings. No amount was awarded for permanent disability and loss of earning power even though he produced a certificate assessing disability at 20%. We have directed the Medical Board to assess the disability and Medical Board has forwarded the certificate assessing disability at 11%. Medical certificate issued by the Medical Board reads as follows:

> "As directed by the Hon'ble high court of Kerala, we, members of the Board, have today examined Purushothaman, 57 years, motor mechanic, whose signature is given above and found that he had an RTA in which he had # BB(L) leg as per copy of discharge summary from Medical College.
>
> C/o Difficulty in getting up, weakness of (L) leg.
>
> O/E - 4 cms long scar lower third of (L)leg. (L) ankle movements - from 900 to 1200 plantar flexion. Inversion, eversion, adduction and abduction 100 each.

X-ray (L) leg - united # BB lower third with 100 lateral angulation.

Based on the above findings his total permanent physical disability is assessed to be 11% (eleven) as per McBride's Scale."

The Tribunal ought have awarded at least some amount for disability and loss of earning power. It is true that as a result of the accident his actual earning in K.S.R.T.C. was not affected. He continued his employment after the leave period. That is permanent in nature that will affect his life through out and after retirement possibility of taking employment will be reduced. He was 52 at the time of accident. Within three years he was liable to retire. Even though he will get pension taking up of a job will be difficult. But for the injuries he could have obtained a good job at the age of 55 considering his technical qualification and experience. Since he continued to get the salary and pension, we are of the view that compensation need not be awarded on a multiplier system.

However considering the disability and loss of earning power after retirement, we award Rs.20,000/-. It is also submitted that he has undergone an operation. The accident occurred at Trivandrum. He was a native of Ernakulam. He has to travel from Ernakulam to Trivandrum to hospital thrice by car. Tribunal has awarded transport expenses as Rs.800/-. We are awarding Rs.2,500/- more on that count. So the additional amount he is entitled comes to Rs.25,000/- and the above amount should be deposited by the 3rd respondent Insurance company with 8% interest from the date of application till deposit. On deposit of the same, appellant is free to withdraw the amount. Accordingly appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1413/2001

JUDGMENT

Dated:15th June, 2007